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NOAH THOMAS

UNITED STATES DISTRICT COURT
LAS VEGAS, NEVADA

NOAH THOMAS, individually and on behalf
of all others similarly situated,

Plaintiff,

-vs-

CONCEALED COALITION, INC,

Defendant.

Case No. 2:24-cv-01062

CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

CLASS ACTION COMPLAINT

Plaintiff Noah Thomas brings this class action against Defendant Concealed Coalition, inc. (“Defendant”) and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff’s own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff’s attorneys.

NATURE OF THE ACTION

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2 1. This is a putative class action pursuant to the Telephone Consumer Protection Act,
3 47 U.S.C. §§ 227, et seq. (the “TCPA”).

4 2. To promote its goods and services, Defendant engages in unsolicited text
5 messaging and continues to text message consumers after they have opted out of Defendant’s
6 solicitations.

7 3. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s illegal
8 conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of
9 the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of
10 Plaintiff and members of the Class, and any other available legal or equitable remedies.

JURISDICTION AND VENUE

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12 4. This Court has federal question subject matter jurisdiction over this action pursuant
13 to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C.
14 §§ 227, et seq. (“TCPA”).

15 5. The Court has personal jurisdiction over Defendant and venue is proper in this
16 District because Defendant directs, markets, and provides its business activities to this District,
17 and because Defendant’s unauthorized marketing scheme was directed by Defendant to consumers
18 from this District.

PARTIES

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20 6. Plaintiff is a natural person.

21 7. Defendant is a corporation whose principal office is located in Nevada.

22 8. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes
23 all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees,
24 sureties, subrogees, representatives, vendors, and insurers of Defendant.

FACTS

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26 9. Defendant has caused multiple text messages to be transmitted to Plaintiff’s cellular
27 telephone number ending in 3388 (“3388 Number”):
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1 16. Plaintiff utilizes the cellular telephone number for personal purposes and the
2 number is Plaintiff's residential telephone line. Plaintiff has no land-line phone number and this
3 number is his only way to contact him when he is home.

4 17. Plaintiff's cellular telephone number has been listed on the National Do Not Call
5 Registry since September 20, 2023.

6 18. Upon information and belief, Defendant maintains and/or has access to outbound
7 transmission reports for all text messages sent advertising/promoting its services and goods. These
8 reports show the dates, times, target telephone numbers, and content of each message sent to
9 Plaintiff and the Class members.

10 19. Defendant's failure to honor opt-out requests demonstrates that Defendant does not
11 1) maintain written policies and procedures regarding its text messaging marketing; (2) provide
12 training to its personnel engaged in telemarketing; and/or (3) maintain a standalone do-not-call
13 list.

14 20. Defendant's failure to (1) maintain the required written policies and procedures, (2)
15 provide training to its personnel engaged in telemarketing, (3) maintain a standalone do-not-call
16 list, and (4) honor consumer opt-out requests caused Plaintiff and the class members harm as they
17 continued to receive text message solicitations after asking for those messages to stop.

18 21. Defendant's telephonic sales calls caused Plaintiff and the Class members harm,
19 including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance, and
20 violation of their statutory privacy rights.

21 22. Defendant's text message spam caused Plaintiff and the Class members harm,
22 including violations of their statutory rights, trespass, annoyance, nuisance, invasion of their
23 privacy, and intrusion upon seclusion. Defendant's text messages also occupied storage space on
24 Plaintiff's and the Class members' telephones.

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1 **CLASS ALLEGATIONS**

2 **PROPOSED CLASS**

3 23. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf
4 of Plaintiff and all others similarly situated.

5 24. Plaintiff brings this case on behalf of the Classes defined as follows:

6 **INTERNAL DO NOT CALL CLASS: All persons within the United States**
7 **who, within the four years prior to the filing of this Complaint, (1) were sent a**
8 **text message from Defendant or anyone on Defendant's behalf, (2) regarding**
9 **Defendant's goods, products or services, (3) to said person's residential**
10 **telephone number, (4) after making a request to Defendant to not receive**
11 **future text messages.**

12 25. Plaintiff reserves the right to modify the Class definitions as warranted as facts are
13 learned in further investigation and discovery.

14 26. Defendant and its employees or agents are excluded from the Classes. Plaintiff does
15 not know the number of members in each the Class but believes the Class members number in the
16 several thousands, if not more.

17 **NUMEROSITY**

18 27. Upon information and belief, Defendant has placed automated calls and
19 prerecorded messages to cellular telephone numbers belonging to thousands of consumers
20 throughout the United States without their prior express consent. The members of the Class,
21 therefore, are believed to be so numerous that joinder of all members is impracticable.

22 28. The exact number and identities of the members of the Class are unknown at this
23 time and can only be ascertained through discovery. Identification of the Class members is a
24 matter capable of ministerial determination from Defendant's call records.

25 **COMMON QUESTIONS OF LAW AND FACT**

26 29. There are numerous questions of law and fact common to members of the Class
27 which predominate over any questions affecting only individual members of the Class. Among
28 the questions of law and fact common to the members of the Class are:

- a. Whether Defendant initiated telephonic sales calls to Plaintiff and the Class members;
- b. Whether Defendant continued to send text message solicitations after opt-out requests;
- c. Whether Defendants maintain an internal do-not-call list and instruct their employees on how to use the list; and
- d. Whether Defendant is liable for damages, and the amount of such damages.

30. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits calls to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

31. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

32. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

33. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

34. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another

1 may not. Additionally, individual actions may be dispositive of the interests of the Class, although
 2 certain class members are not parties to such actions.

3 **COUNT I**
 4 **VIOLATION OF 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(d)**
(On Behalf of Plaintiff and the Internal Do Not Call Class)

5 35. Plaintiff re-alleges and incorporates the foregoing allegations set forth in
 6 paragraphs 1 through 33 as if fully set forth herein.

7 36. In pertinent part, 47 C.F.R. § 64.1200(d) provides:

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 9 No person or entity shall initiate any call for telemarketing purposes
 10 to a residential telephone subscriber unless such person or entity has
 11 instituted procedures for maintaining a list of persons who request
 12 not to receive telemarketing calls made by or on behalf of that
 13 person or entity. The procedures instituted must meet the following
 14 minimum standards:

15 (1) *Written policy.* Persons or entities making calls for telemarketing
 16 purposes must have a written policy, available upon demand, for
 17 maintaining a do-not-call list.

18 (2) *Training of personnel engaged in telemarketing.* Personnel
 19 engaged in any aspect of telemarketing must be informed and
 20 trained in the existence and use of the do-not-call list.

21 (3) *Recording, disclosure of do-not-call requests.* If a person or
 22 entity making a call for telemarketing purposes (or on whose behalf
 23 such a call is made) receives a request from a residential
 24 telephone subscriber not to receive calls from that person or entity,
 25 the person or entity must record the request and place
 26 the subscriber's name, if provided, and telephone number on the do-
 27 not-call list at the time the request is made. Persons or entities
 28 making calls for telemarketing purposes (or on whose behalf such
 calls are made) must honor a residential subscriber's do-not-call
 request within a reasonable time from the date such request is made.
 This period may not exceed thirty days from the date of such request.
 If such requests are recorded or maintained by a party other than the
 person or entity on whose behalf the telemarketing call is made, the
 person or entity on whose behalf the telemarketing call is made will
 be liable for any failures to honor the do-not-call request. A person
 or entity making a call for telemarketing purposes must obtain
 a consumer's prior express permission to share or forward
 the consumer's request not to be called to a party other than the
 person or entity on whose behalf a telemarketing call is made or
 an affiliated entity.

1 37. Under 47 C.F.R § 64.1200(e), the rules set forth in 47 C.F.R. § 64.1200(d) are
2 applicable to any person or entity making telephone solicitations or telemarketing calls to wireless
3 telephone numbers.

4 38. Plaintiff and the Internal Do Not Call Class members made requests to Defendant
5 not to receive calls from Defendant.

6 39. Defendant failed to honor Plaintiff and the Internal Do Not Call Class members
7 opt-out requests.

8 40. Defendant's refusal to honor opt-out requests is indicative of Defendant's failure to
9 implement a written policy for maintaining a do-not-call list and to train its personnel engaged in
10 telemarketing on the existence and use of the do-not-call-list.

11 41. Thus, Defendant has violated 47 C.F.R. § 64.1200(d).

12 42. Pursuant to section 227(c)(5) of the TCPA, Plaintiff and the Internal Do Not Call
13 Class members are entitled to an award of \$500.00 in statutory damages, for each and every
14 negligent violation.

15 43. As a result of Defendant's knowing or willful conduct, Plaintiff and the Internal Do
16 Not Call Class members are entitled to an award of \$1,500.00 in statutory damages per violation.

17 44. Plaintiff and the Internal Do Not Call Class members are also entitled to and seek
18 injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to section
19 227(c)(5).

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21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following
23 relief:

- 24 a) An order certifying this case as a class action on behalf of the Classes as defined
25 above, and appointing Plaintiff as the representative of the Classes and Plaintiff's
26 counsel as Class Counsel;

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DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant takes affirmative steps to preserve all records, lists, electronic databases or other itemization of telephone numbers associated with Defendant and the communication or transmittal of the text messages as alleged herein.

DATED: June 6, 2024.

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